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SUPREME COURT DECLINES TO REVIEW MISSOURI RIVER MANAGEMENT

BISMARCK –The United States Supreme Court has declined to become involved in the controversy over Missouri River management. In an order released today, the Court rejected a joint petition for certiorari filed by the attorneys general of North Dakota and South Dakota. The petition had asked the high court to review an Eighth Circuit Court of Appeals decision issued last August regarding the U.S. Army Corps of Engineers' management of the river.

Attorney General Wayne Stenehjem stated, "I am deeply disappointed with the decision. The Missouri River is one of the country's greatest resources and isn't being managed as Congress directed. The Court really should have reviewed the Corps' operations."

The case involves a number of lawsuits filed in 2002 and 2003 by not only North and South Dakota but also environmental organizations, the barge industry, downstream power companies, and the states of Missouri and Nebraska.

North Dakota's suit asserted that the Corps' releases of water from Lake Sakakawea damage the recreational value of the lake. Low lakes levels have hindered access and damaged the lake's walleye fishery.

At the heart of the dispute is whether the Flood Control Act of 1944, which governs management of the river, gives navigation priority over recreation. Although a district court agreed with North Dakota's position in a 2004 decision, the ruling was appealed by the downstream states and interests to the Eighth Circuit Court of Appeals in St. Louis. In a decision issued in August, that court overruled the lower court, concluding that the 1944 Act gives navigation a priority.

Stenehjem stated, "I believe the 8th Circuit misinterpreted the Flood Control Act, and navigation is not entitled to priority over recreation and other interests. I maintain the Flood Control Act requires the Corps to equitably balance all uses." In his petition Stenehjem asked the Supreme Court to overturn the Eighth Circuit decision and clarify the priority issue. He noted, "In light of the overwhelming economic value of recreation on the Missouri River to upstream states, the Supreme Court should have taken this case."

Friend of the court briefs in support of the Dakota's petition were filed by the State of Montana as well as by the Mandan, Hidatsa, and Arikara Nation and the Cheyenne River Sioux Tribe. The States of Nebraska and Missouri and the Corps of Engineers filed briefs opposing the petition.

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